



CALIFORNIA ASSESSORS' ASSOCIATION

February 22, 2012

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RE: Request for Revision to Property Tax Rule 462.040 – Joint Tenancy

The California Assessor's Association has been approached with a request that we re-submit a request for revisions to the Joint Tenancy Property Tax Rule.

We reviewed the request submitted back in 2007, and we would like to streamline our suggested changes. We request three changes, and additional clarifying examples for one section.

Our requests, in order of priority, are as follows.

1. Our first and most immediate problem/concern is that of trusts in joint tenancies. We understand the intent behind the rule change in 2003 was to allow registered domestic partners to take advantage of the original transferor exclusion, and that it was attempting to broaden the original intent of a 'family' joint tenancy.

Understanding the joint tenancy exclusions was already confusing for most people. Unfortunately, the addition of trusts to joint tenancy has created additional chaos for both property owners and various administrators, including assessors, title companies, and attorneys. We believe that because of the complexities involved, there is also an increase in inconsistent application and understanding of the rule within assessment offices throughout the state. The real and potential problems that can occur when trusts are considered a joint tenant were both unanticipated and unintended by the Board.

We understand that this change, if agreed to, will be prospective only. We do not intend for anyone to be harmed who has relied on the rule as currently written.

2. Clarifying examples need to be added for section (b)(4)(C). There is currently a court case in Marin County, because an attorney and an appeals board and a Superior Court judge did not understand how this section of the rule was meant to be interpreted.

3. Our third concern is the interpretation that allows a change in vesting to create original transferors. Until 2003, a change in vesting only (e.g. A and B as tenants in common to A and B as joint tenants) would not create original transferors. This is consistent with the original Legislative intent. If parents

were on title and added a child or children as joint tenants, or if two individuals were on title and they added the spouse of one of the individuals, then original transferors would be created. However, a deed that only changed the method of holding title was never intended to result in this exclusion.

4. Finally, we would like to reverse a 1999 amendment to the rule. We do not believe this change follows the requirements of the statute under Revenue and Taxation Code section 65(b).

The amendment was stated as follows: "If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest *or by means of a transfer from the original transferor*, such spouse shall also be considered to be an original transferor." (Emphasis added.) In addition, Example 7-2 was added to the rule.

Revenue and Taxation Code section 65(b) states:

There shall be no change in ownership upon the creation or transfer of a joint tenancy interest *if the transferor or transferors, after such creation or transfer, are among the joint tenants*. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses or original transferors shall also be considered original transferors within the meaning of this section. (Emphasis added.)

The code requires that the transferor be among the joint tenants "after such creation or transfer." We believe the rule broadens what is allowed by code.

To summarize, we would like four changes/additions, and in the following priority of urgency.

- First, remove any mention of trusts within a joint tenancy, other than between November 13, 2003 and the date of the proposed regulatory change.
- Second, add examples to clarify the intent of (b)(4)(C).
- Third, return the requirement for an additional person to be added before an original transferor can be created.
- Fourth, require a grantor who is an original transferor to remain on title as a grantee in order for a spouse to acquire original transferor status.

Attached is the Property Tax Rule with suggested revisions in the standard underline/strikeout format.

Thank you for your assistance in this endeavor. Should you have any questions, please call me at (805) 781-5636.

Sincerely,



Tom J. Bordonaro, Jr.
California Assessor's Association, President
San Luis Obispo County, Assessor

Attachment